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Applicant:	:	Joachim Bruchlos	
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Title:	:	Utilization Method and System within	
	:	a Communications Network	
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Examiner:	:	Dante Ravetti	
	:		
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Mail Stop: AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF IN COMPLIANCE WITH 37 CFR 41.37

In response to the Final Office Action dated as mailed October 28, 2009 this appeal brief is being submitted. The Notice of Appeal was acknowledged as being received on February 10, 2010.

I. Real Party in Interest

The real party in interest is International Business Machines (IBM) Corporation, assignee of record.

II. Related Appeals and Interferences

There are no other appeals or interferences, known to the Appellants, or Appellants' legal representatives, which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

III. Status of Claims

A. Status of All Claims

1. Claims cancelled: 1-20.
2. Claims withdrawn from consideration but not cancelled: 30-34
3. Claims objected to: None
4. Claims allowed or confirmed: None
5. Claims rejected: 21-29 and 35-40.

B. Claims on Appeal

The claims on appeal are: 21-29 and 35-40.

IV. Status of Amendments

There were no amendments filed after the final office action of October 30, 2009. Applicant chose to proceed directly with this appeal. All previous papers filed by Applicant have been entered.

V. Summary of Claimed Subject Matter

The present invention relates to a utilization method within a communication network and computer readable medium having a computer usable program code embodied therewith. A service request message is received from a service consumer by a metering handler. The metering handler generates a meter event request associated with the service request and evaluates a status of at least one parameter. The metering handler compares an amount of stored meter event requests stored in a cache memory with the at least one parameter and stores the meter event request in the cache memory or sends the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison. The at least one parameter is associated with the service request and a predefined convention, and the at least one parameter defines how many meter event requests may be stored in the cache memory.

Claims 21 and 35 are independent claims. Claim 21 is an independent method claim reciting a utilization method within a communications network. As described below, the features of claim 21 are represented in Figure 1 and are described in paragraphs [0033]-[0039]. The first element, paragraph or feature of claim 21 is directed to receiving, by a metering handler, a service request message from a service consumer. A metering handler is represented in Figure 2 by reference numeral 50 and the different components and operations of the metering handler are described in paragraphs [0043]-[0053]. Paragraph [0046], first line described an input device 59 of the metering handler 50 in Figure 2 receiving a service request from a service consumer.

The second element, paragraph or feature of claim 21 is generating, by the metering handler, a meter event request associated with the service request. Paragraph [0047] describes a meter event generator 62 of the metering handler 50 creating a meter event request. Block 22 of Figure 1 and paragraph [0034] also describe generating a meter event request.

The third element, paragraph or feature of claim 21 is evaluating, by the metering handler, a status of at least one parameter. As described in paragraph [0035] of the specification step 24 in Figure 1 evaluates the status of a CEP (Cache Enable Parameter), and as described in paragraph [0037] step 26 of Figure 1 evaluates a CFP (Cache Flush Parameter). Paragraphs [0048] and [0049] also describe evaluating the CEP and CFP in the metering handler 50 in Figure 2.

The fourth element, paragraph or feature of claim 21 is comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter. This feature is represented by block or step 26 in Figure 1 and is described in paragraph [0037] of the specification. A cache memory is also represented by reference numeral 70 in Figure 2 and described in paragraph [0049] of the specification.

The fifth element, paragraph or feature of claim 21 is storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison. These feature are represented by blocks or steps 26, 27 and 28 in Figure 1 and are described in paragraph [0038]-[0039] of the specification.

The sixth element, paragraph or feature of claim 21 provides that at least one parameter is associated with the service request and a predefined convention, and said at least one parameter

defines how many meter event requests may be stored in the cache memory. This feature is represented by the CFP (Cache Flush Parameter) and is described in paragraph [0037] of the specification.

Claim 35 is a computer readable medium claim having computer usable program code embodied therewith. The computer usable program code when executed causing a processing device to perform the functions recited in claim 35 as further described below. Paragraph [0074] of the specification provides that the present invention can also be embodied in a computer program product which comprises all the features enabling the implementation of the methods described in the specification. Further, when loaded in a computer system the computer program product is able to carry out the methods described in the specification.

The first element, paragraph or feature of claim 35 involves receiving a service request message from a service consumer. Paragraph [0046], first line described an input device 59 of the metering handler 50 in Figure 2 receiving a service request from a service consumer.

The second element, paragraph or feature of claim 35 is directed to generating a meter event request associated with the service request. Block 22 of Figure 1 and paragraph [0034] describe generating a meter event request.

The third element, paragraph or feature of claim 35 recites evaluating, by a cache enabler, a status of at least one parameter. As described paragraph [0035] of the specification step 24 in Figure 1 evaluates the status of a CEP (Cache Enable Parameter), and as described in paragraph [0037] step 26 of Figure 1 evaluates a CFP (Cache Flush Parameter). Paragraphs [0048] also describe evaluating the CEP by the cache enabler 64 in Figure 2.

The fourth element, paragraph or feature recites of claim 35 comparing an amount of stored meter event requests stored in a cache memory with the at least one parameter. This feature is represented by block or step 26 in Figure 1 and is described in paragraph [0037] of the specification. A cache memory is also represented by reference numeral 70 in Figure 2 and described in paragraph [0049] of the specification.

The fifth element, paragraph or feature of claim 35 recites storing the meter event request in the cache memory or send the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the

comparison. These feature are represented by blocks or steps 26, 27 and 28 in Figure 1 and are described in paragraph [0038]-[0039] of the specification.

The sixth element, paragraph or feature of claim 35 recites wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory. This feature is represented by the CFP (Cache Flush Parameter) and is described in paragraph [0037] of the specification.

VI. Grounds of Rejection to be Reviewed on Appeal

Whether claims 21-29 and 35-40 are unpatentable under 35 USC §112, first paragraph as failing to comply with the written description requirement.

Whether claims 21-29 and 35-40 are unpatentable under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Whether claims 21-29 and 35-40 are unpatentable under 35 USC §103 (a) as being obvious over Bunch (US Patent No. 6,795,856; hereinafter Bunch) in view of Coley et al. (U.S. Patent Pub. No. 2001/0011253; hereinafter Coley).

VII. Arguments

Rejection under 35 U.S.C. §112, First Paragraph

Claims 21-29 and 35-40

With regard to independent claim 21, claim 21 recites:

"generating, by the metering handler, a meter event request associated with the service request…

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;"

Because claim 21 clearly recites storing the meter event request in the cache memory or sending the meter event request, the cache memory may contain meter event requests in response receiving previous service request messages and generating meter request event requests associated with the service requests. Claim 21 is clearly not limited to receiving only a single service request message. Therefore, multiple service request messages may be received and associated meter event requests may be generated and stored by the method of claim 21 and as supported by paragraphs [0039] and [0049] of the specification. Applicant respectfully submits that a person skilled in the art would recognize that an "entire contents of the cache memory" as recited in claim 21 would be all meter event requests stored in the cache memory from the context of the claim. Reconsideration and withdrawal of the Section 112, first paragraph rejection of claim 21 is respectfully requested.

Claim 35 recites similar features to independent claim 21. Therefore, claim 35 is respectfully submitted to satisfy the requirements of Section 112, first paragraph, for the same reasons as claim 21. Reconsideration and withdrawal of the Section 112 rejection of claim 35 is respectfully solicited.

Claims 22-29 depend either directly or indirectly from independent claim 21 and claims 36-40 depend either directly or indirectly from independent claim 35. Therefore, these claims are also respectfully submitted to satisfy the requirements of Section 112, first paragraph, and reconsideration and withdrawal of the Section 112 rejection of these claims is respectfully requested.

Rejection under 35 U.S.C. §112, Second Paragraph

Claims 21-29 and 35-40

The Examiner asserts that claim 21 is incomplete for omitting essential steps. Specifically, the Examiner asserts that it is unclear how the comparing can be performed with the requests stored in the cache memory without first storing requests in the cache memory. Claim 21 recites:

> comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter; *(Emphasis Added)*

Applicant respectfully submits that the amount being compared with the at least one parameter is merely a quantity or number of requests stored. There is no comparison with the requests stored in the cache memory as asserted in the Office Action on page 6, only a comparison to a number or amount of meter event request that may be stored in the cache memory. The amount of requests stored can therefore be zero or no requests have been previously stored in the cache memory. Accordingly, Applicant respectfully submits that claim 21 does not omit any essential steps. Applicant further respectfully submits that claim 21 satisfies the requirements of 35 USC §112, second paragraph, and reconsideration and withdrawal of the Section 112 rejection of claim 21 is respectfully requested.

Claim 35 recites similar features to independent claim 21. Therefore, claim 35 is also submitted to satisfy the requirements of Section 112, second paragraph, for the same reasons as claim 21. Reconsideration and withdrawal of the Section 112 rejection of claim 35 is also respectfully requested.

Because independent claims 21 and 35 satisfy the requirements of Section 112 as discussed above, claims 22-29 and 36-40 are also respectfully submitted to satisfy the requirements of Section 112. Reconsideration and withdrawal of the Section 112 rejection of these claims is respectfully solicited.

Rejection under 35 U.S.C. §103(a) as being obvious in view Bunch and further in view of Coley

Claims 21-29 and 35-40

Applicant respectfully submits that this rejection under 35 U.S.C. §103 does not follow the MPEP §706.02(j) which states:

> "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

As discussed below, Applicant respectfully submits that Bunch and Coley, whether considered individually or combined, fail to teach or suggest the essential elements needed for a *prima facia* rejection under §103. Claim 21 recites:

> "comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;
>
> storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;
>
> wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory."

Applicant respectfully submits that neither Bunch nor Coley teach or suggest these features of independent claim 21. The Office Action dated as mail October 28, 2009 admits on page 8 that Bunch does not teach "comparing, by the metering handler, and amount of stored meter event requests stored in a cache memory with the at least one parameter". The Office Action cites paragraphs [0024]-[0027], [0060], [0064]-[0066], [0074], [0081] and [0104] of Coley for this deficiency. Applicant respectfully submits that these paragraphs of Coley also do not teach or suggest the features of the present invention as recited in claim 21. Applicant respectfully submits that these paragraphs of Coley merely describe cache components for storing license information and records. For example, the last sentence of paragraph [0024] the recites:

> "Licensing modules include an agent component for communicating with a downstream client, a cache component for interim storage of licensing information, and a client component for communicating with an upstream agent."

The last sentence of paragraph [0025] of Coley recites:

> "The cache components in the licensing modules can be used to store license records so that license inquiries can be addressed without having to forward the validation inquiry request messages to the license server."

The first sentence of paragraph [0064] recites:

> "In accordance with a preferred embodiment of the invention, the license system operates by distributing licensing information to the cache components 520 in the licensing modules in response to inquiries or requests."

The only paragraph of Coley cited on page 8 of the Office Action that describes comparing or making a comparison is paragraph [0074]. Paragraph [0074] of Coley recites:

> [0074] The database or cache query also may involve a comparison of the date/time stamp contained in the client data structure with date/time information maintained by the license server or license module system. This added security measure can detect a user's tampering with system time and date information on their computer. If the particular software application is operating in a demonstration mode for a predefined period of time, the date/time stamp passed in the client data structure can be used as an initial check of whether the demonstration period has expired. If there is date/time corruption, the client application can be disabled.

Accordingly, Coley merely teaches performing a comparison of the date/time stamp contained in the client data structure with date/time information maintained by the license server or license module system. Applicant respectfully submits that there is no teaching or suggestion in either Bunch or Coley of comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the least one parameter nor do either Bunch or Coley teach or suggest that the at least one parameter defines how many meter event requests may be stored in the cache memory.

For all of the reasons discussed above, Applicant respectfully submits that independent claim 21 is patently distinguishable over Bunch and Coley, whether considered individually or combined, and reconsideration and withdrawal of the Section 103 rejection of claim 21 is respectfully requested.

Claims 22-29 recite additional features which further patently distinguish over Bunch and Coley. Additionally, these claims depend either directly or indirectly from independent claim 21. Because of this dependency, claims 22-29 include all of the features of claim 21. Therefore, claims 22-29 are respectfully submitted to be patently distinguishable over Bunch and Coley for the same reasons as claim 21. Reconsideration and withdrawal of the Section 103 rejection of claims 22-29 is respectfully solicited.

Claim 35 recites similar features to independent claim 21. Therefore, claim 35 is respectfully submitted to be patently distinguishable over Bunch and Coley for the same reasons as discussed with respect to claim 21. Reconsideration and withdrawal of the Section 103 rejection of claim 35 is respectfully requested.

Claims 36-40 depend either directly or indirectly from independent claim 35. As a result of this dependency, claims 36-40 include all of the features of claim 35. Accordingly, claims 36-40 are respectfully submitted to be patently distinguishable over Bunch and Coley for the same reasons as independent claim 35. Reconsideration and withdrawal of the Section 103 rejection of claims 36-40 is respectfully solicited.

Conclusion

For the reasons discussed above, Applicant respectfully submits that the rejections standing in this application are improper. As discussed above, claims 21-29 and 35-40 satisfy the requirements of 35 U.S.C. § 112. Additionally, the Examiner has failed to establish a *prima fascia* case of obviousness under 35 U.S.C. §103(a) with respect to claims 21-29 and 35-40. Therefore, Applicant respectfully submits these claims are in condition for allowance. Reversal of the rejection of claims 21-29 and 35-40 is respectfully requested.

Respectfully submitted,

Joachim Bruchlos
(Applicant)

Date: April 8, 2010

By: Charles L. Moore

Charles L. Moore
Registration No. 33,742
Moore & Van Allen PLLC
P.O. Box 13706
Research Triangle Park, N.C. 27709
Telephone: (919) 286-8000
Facsimile: (919) 286-8199

VIII. Claims Appendix

Claims 1-20 – Cancelled

21. (Previously Presented) A utilization method within a communication network, the method comprising:

receiving, by a metering handler, a service request message from a service consumer;

generating, by the metering handler, a meter event request associated with the service request;

evaluating, by the metering handler, a status of at least one parameter;

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory.

22. (Previously Presented) The method of claim 21, wherein the evaluating the status of the at least one parameter comprises evaluating a status of a boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory.

23. (Previously Presented) The method of claim 22, wherein the comparing the amount of stored meter event requests stored in a cache memory with the at least one parameter comprises:

evaluating, by the metering handler, a value of an integer parameter associated with the boolean parameter; and

comparing, by the metering handler, said value of the integer parameter with the amount of stored meter event requests stored in the cache memory.

24. (Previously Presented) The method of claim 23, further comprising sending, by the metering handler, the meter event request to the metering service in order to process the meter event request and deleting, by the metering handler, the entire contents of the cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter.

25. (Previously Presented) The method of claim 23, wherein the meter event request is stored in the cache memory when the actual number of the meter event requests in the cache memory is less than said value of the integer parameter.

26. (Previously Presented) The method of claim 21, wherein the predefined convention is defined in a license contract which relates to kinds and amount of services between a service provider and the service consumer.

27. (Previously Presented) The method of claim 21, wherein a relevant information is separated, by the metering handler, from the service request message after receiving the service request message.

28. (Previously Presented) The method of claim 27, wherein the relevant information of the service request message comprises at least one of request data, contract data, license data, the boolean parameter, the integer parameter and the identity of the service consumer.

29. (Previously Presented) The method of claim 21 further comprising:

counting, by the metering handler, the services when the associated meter event request is sent to the metering service; and

sending, by the metering handler, the actual counting results to at least one of a service provider and the service consumer.

30. (Withdrawn) A utilization system within a communication network, said system comprising:

an input device for receiving a service request message from a service consumer;

a generator for generating a meter event request associated with the service request;

a cache memory for storing the meter event requests;

a cache controller for controlling the cache memory; and

an invocator for sending the meter event requests to a metering service in order to process the meter event requests;

wherein said system comprises a cache enabler for evaluating if any meter event request may be stored in the cache memory, and a monitor for evaluating how many meter event requests may be stored in the cache memory depending on at least one parameter associated with the request and a predefined convention.

31. (Withdrawn) The system of claim 30, wherein the cache enabler evaluates a status of a boolean parameter which indicates if the meter event request may be stored in the cache memory.

32. (Withdrawn) The system of claim 30, wherein the monitor evaluates a status of an integer parameter which indicates how many meter event requests may be stored in the cache memory.

33. (Withdrawn) The system of claim 30, wherein said input device is coupled with a message context separator for separating the relevant information from the service request message.

34. (Withdrawn) The system of claim 30, further comprising a counter for counting the requested services when associated meter event requests has been sent to the metering service.

35. (Previously Presented) A computer readable medium having computer usable program code embodied therewith, the computer usable program code when executed causing a processing device to perform:

receiving a service request message from a service consumer;

generating a meter event request associated with the service request;

evaluating, by a cache enabler, a status of at least one parameter;

comparing an amount of stored meter event requests stored in a cache memory with the at least one parameter;

storing the meter event request in the cache memory or send the meter event request and an entire contents of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory.

36. (Previously Presented) The computer readable medium of claim 35, wherein the comparing the actual content of a cache memory with at least one parameter comprises evaluating a status of a boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory.

37. (Previously Presented) The computer readable medium of claim 36, wherein the comparing the actual content of a cache memory with at least one parameter comprises:

evaluating a value of an integer parameter associated with the boolean parameter; and

comparing said value of the integer parameter with the content of the cache memory.

38. (Previously Presented) The computer readable medium of claim 37, further comprising configuring to send the meter event request to the metering service in order to process the meter event request and deleting the content of the cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter.

39. (Previously Presented) The computer readable medium of claim 37, wherein the meter event request is stored in the cache memory if the actual number of the meter event requests in the cache memory is less than said value of the integer parameter.

40. (Previously Presented) The computer readable medium of claim 35, wherein the predefined convention is defined in a license contract which relates to the kinds and amount of services between a service provider and the service consumer.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.